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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Susanne Jane Giusa,
10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,
14 Defendant.

No. CV-19-02464-PHX-MTL

ORDER

15
16 At issue is the denial of Plaintiff Susanne Jane Giusa's Application for Disability
17 Insurance Benefits by the Social Security Administration under the Social Security Act.
18 Plaintiff filed a Complaint (Doc. 1) seeking judicial review of that denial, and the Court
19 now addresses Plaintiff's Opening Brief (Doc. 11, Pl. Br.), Defendant Social Security
20 Administration Commissioner's Opposition (Doc. 12, Def. Br.), and Plaintiff's Reply
21 (Doc. 14, Reply). The Court has reviewed the briefs and the Administrative Record (Doc.
22 9, R.) and now reverses the Administrative Law Judge's (ALJ) decision (R. at 14–31).

23 **I. BACKGROUND**

24 Plaintiff filed her Application for Disability Insurance Benefits on August 25, 2015,
25 alleging a period of disability beginning on March 13, 2015. (R. at 17.) Plaintiff's claim
26 was denied initially on November 10, 2015, and upon reconsideration on March 31, 2016.
27 (R. at 17.) Plaintiff then testified at a hearing held before the ALJ on January 9, 2018. (R.
28 at 17.) On May 25, 2018, the ALJ denied Plaintiff's Application. (R. at 14–31.) This

1 decision became final on February 16, 2019, when the Appeals Council denied Plaintiff's
2 request for review. (R. at 1–7.)

3 The Court has reviewed the medical evidence in its entirety and finds it unnecessary
4 to provide a complete summary here. The pertinent medical evidence will be discussed in
5 addressing the issues raised by the parties. In short, upon considering the medical records
6 and opinions, the ALJ evaluated Plaintiff's disability based on the following severe
7 impairments: migraine headaches, fibromyalgia, and degenerative disc disease of the
8 cervical and lumbar spine. (R. at 19.)

9 Ultimately, the ALJ concluded that Plaintiff is not disabled. (R. at 25.) The ALJ
10 determined that Plaintiff "does not have an impairment or combination of impairments that
11 meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404,
12 Subpart P, Appendix 1." (R. at 21.) The ALJ also determined that Plaintiff has the residual
13 functional capacity (RFC) to perform a range of light work as defined in 20 C.F.R.
14 § 404.1567(b) with the following limitations: (1) avoiding concentrated exposure to
15 temperature extremes, loud noise environments, pulmonary irritants, and hazards,
16 including unprotected heights and moving machinery; and (2) not performing driving duty
17 jobs. (R. at 22.) After determining Plaintiff's RFC, the ALJ concluded that Plaintiff can
18 perform her past relevant work as an administrative assistant, receptionist, and unit clerk.
19 (R. at 25.)

20 **II. LEGAL STANDARD**

21 In determining whether to reverse an ALJ's decision, the district court reviews only
22 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,
23 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner's disability
24 determination only if the determination is not supported by substantial evidence or is based
25 on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is
26 more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable
27 person might accept as adequate to support a conclusion when considering the record as a
28 whole. *Id.* To determine whether substantial evidence supports a decision, the court must

1 consider the record as a whole and may not affirm simply by isolating a “specific quantum
2 of supporting evidence.” *Id.* Generally, “[w]here the evidence is susceptible to more than
3 one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion
4 must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations
5 omitted).

6 To determine whether a claimant is disabled for purposes of the Social Security Act,
7 the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the
8 burden of proof on the first four steps, but the burden shifts to the Commissioner at step
9 five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At step one, the ALJ determines
10 whether the claimant is presently engaging in substantial gainful activity. 20 C.F.R. §
11 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.* At step two,
12 the ALJ determines whether the claimant has a “severe” medically determinable physical
13 or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not disabled
14 and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s
15 impairment or combination of impairments meets or medically equals an impairment listed
16 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so,
17 the claimant is automatically found to be disabled and the inquiry ends. *Id.* At step four,
18 the ALJ assesses the claimant’s RFC and determines whether the claimant is still capable
19 of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not
20 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where
21 she determines whether the claimant can perform any work in the national economy based
22 on the claimant’s RFC, age, education, and work experience. 20 C.F.R.
23 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.*

24 **III. ANALYSIS**

25 Plaintiff raises two issues for the Court’s consideration: (1) the ALJ erred by
26 rejecting her symptom testimony; and (2) the ALJ erred by rejecting the opinion of her
27 treating physician, Dr. Troy Anderson. The Court finds that the ALJ errantly rejected
28 Plaintiff’s symptom testimony and Dr. Anderson’s opinion.

1 **A. The ALJ erred by rejecting Plaintiff’s symptom testimony.**

2 Plaintiff produced multiple forms of evidence, including medical records, function
3 reports, and hearing testimony, attesting to the severity and persistence of her pain and
4 limitations. Plaintiff reported that she suffers from headaches and migraines at least 20
5 days per month that last anywhere from six hours to three days at a time. (R. at 262.) She
6 testified that her migraines cause nausea, fatigue, blurred vision, and pain. (R. at 66.) She
7 reported that she is unable to leave home, use a computer or phone, or drive when she is
8 suffering from a migraine. (R. at 222.) She reported sensitivity to noise, bright lights, and
9 temperatures. (R. at 67, 222.) She also reported that her migraines cause difficulty with
10 walking, climbing stairs, seeing, remembering, completing tasks, concentrating, forming
11 thoughts, making sound decisions, and following instructions. (R. at 66, 222, 227.)

12 The ALJ rejected Plaintiff’s testimony for three reasons. First, the ALJ found that
13 Plaintiff has learned to function despite her migraines because she has suffered from them
14 her entire life and still worked full-time since 1997. (R. at 24.) Second, the ALJ found that
15 Plaintiff’s migraines improved with treatment “such that she remains independent, active,
16 and reasonably able to perform work activities.” (R. at 24.) Third, the ALJ found that
17 Plaintiff’s headaches were not substantiated by objective medical evidence. (R. at 24.) The
18 Court finds that none of these reasons are sufficient.

19 While credibility is the province of the ALJ, an adverse credibility determination
20 requires the ALJ to provide “specific, clear and convincing reasons for rejecting the
21 claimant’s testimony regarding the severity of the claimant’s symptoms.” *Treichler v.*
22 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (*citing Smolen v. Chater*, 80
23 F.3d 1273, 1281 (9th Cir. 1996)). This is the most demanding standard in Social Security
24 cases. *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014). The ALJ may properly
25 consider that the claimant’s medical record does not contain evidence to support certain
26 symptom testimony, but that cannot form the sole basis for discounting the testimony.
27 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). The ALJ may also properly consider
28 inconsistencies in the claimant’s daily activities, treatment, and symptoms. *Id.*

1 The ALJ’s first reason for discrediting Plaintiff’s testimony—that she has learned
2 to function despite her migraines—is neither clear and convincing nor supported by
3 substantial evidence. To support the ALJ’s reasoning, the ALJ relied on Plaintiff’s work
4 history, noting that she has consistently worked full-time in various semi-skilled jobs since
5 1997 despite suffering from migraines her entire life. (R. at 23–24.) From this, the ALJ
6 concluded that Plaintiff “has learned to cope, adapt, and otherwise function in spite of her
7 chronic intractable migraine headaches.” (R. at 24.) However, this falls short of the
8 exacting *specific*, clear, and convincing standard. *See Treichler*, 775 F.3d at 1102
9 (emphasis added). The ALJ did not point to evidence of coping mechanisms or determine
10 whether Plaintiff could adapt and continue working if her impairments worsened, as she
11 claims happened. (R. at 47–49.) Notably, that Plaintiff tried working and failed due to her
12 impairments supports her testimony. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th
13 Cir. 2007).

14 Plaintiff testified that her migraines increased in frequency so much so that by 2015
15 she had to stop working because her employer would no longer accommodate her requests
16 for medical leave. (R. at 47–49.) However, the ALJ found this part of Plaintiff’s testimony
17 unbelievable because medical records showed that from 2009 to 2015 Plaintiff’s memory
18 deficit only mildly advanced, her sustained attention improved, and her intellectual
19 functioning was unchanged. (R. at 24.) The Court is not persuaded by the ALJ’s rationale.
20 The ALJ relied solely on objective evidence, or a lack thereof, to discredit Plaintiff’s
21 testimony that her migraines worsened to the point where she could no longer work.
22 However, the regulations prevent the ALJ from discounting a claimant’s subjective reports
23 solely because of a lack of corroborating medical evidence. *See Burch*, 400 F.3d at 680.
24 “The rationale for this restriction is that pain testimony may establish greater limitations
25 than can medical evidence alone.” *Id.* In this case, that rationale is reflected in an opinion
26 by Plaintiff’s treating physician, Dr. Troy Anderson, that it is not uncommon for
27 individuals with migraines to have unremarkable objective test results. (R. at 448.)

28 To discredit Plaintiff’s reports that her migraines worsened, the ALJ needed to

1 identify some other evidence in the record that was probative of her ability to work. For
2 example, the ALJ could have considered whether Plaintiff was engaged in daily activities
3 that could be transferred to a work setting. *See Burch*, 400 F.3d at 681. Alternatively, the
4 ALJ could have pointed to evidence that showed Plaintiff's allegations regarding the
5 severity of her limitations were exaggerated. *See Valentine v. Comm'r Soc. Sec. Admin.*,
6 574 F.3d 685, 693 (9th Cir. 2009). Instead, the ALJ relied solely on a lack of corroborating
7 medical evidence, which was error.

8 The ALJ's second reason for rejecting Plaintiff's testimony—that her symptoms
9 improved with treatment—is not specific, clear, and convincing or supported by substantial
10 evidence. The ALJ may consider that a claimant's symptoms improved in response to
11 treatment, but it is error to rely on temporary or isolated instances of improvement as
12 evidence that the claimant is capable of sustaining work. *Garrison*, 759 F.3d at 1018. Here,
13 the ALJ identified the many forms of treatment that Plaintiff pursued and concluded that
14 they were “relatively successful in reducing the frequency and severity of [Plaintiff's]
15 chronic migraines such that she remains independent, active, and reasonably able to
16 perform work activities.” (R. at 24.) The Court finds two errors in this rationale.

17 First, the ALJ's conclusion that Plaintiff's symptoms improved with treatment is
18 belied by the record. Specifically, many of the records the ALJ cited actually contradict the
19 ALJ's conclusion that Plaintiff improved in response to treatment. For example, Dr. Donald
20 Fruchtmann noted that Plaintiff has tried nerve blocks, Botox injections, and drug therapy
21 without success. (R. at 391.) In June 2015, Dr. Troy Anderson observed that Plaintiff's
22 “memory appears to be worse.” (R. at 403.) Also in June 2015, Dr. Albert Klaski noted
23 that Plaintiff did not wish to pursue Botox injections because it caused severe neck
24 discomfort. (R. at 405.) Finally, records from Pinnacle Internal Medicine indicate that
25 Plaintiff did not experience relief from migraine medications like Nortriptyline, Topamax,
26 Zonergan, or Propranolol. (R. at 435.) In sum, the record does not support the ALJ's finding
27 that Plaintiff's symptoms improved with treatment.

1 Second, the ALJ’s conclusion that Plaintiff “remains independent, active, and
2 reasonably able to perform work activities” is not adequately explained or supported by
3 substantial evidence. Plaintiff argues that the ALJ did not connect the discussion of
4 Plaintiff’s “improvement” to the finding that she can sustain work (Pl. Br. at 15). The Court
5 agrees. The ALJ must point to specific evidence in the record and explain how it
6 undermines Plaintiff’s alleged limitations. *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir.
7 2009). This includes treatment records or daily activities that the ALJ finds to be
8 inconsistent with Plaintiff’s testimony. *See Burch*, 400 F.3d at 681. The ALJ did not do
9 this and therefore erred.

10 The ALJ’s final reason for rejecting Plaintiff’s testimony—that objective medical
11 evidence did not support Plaintiff’s alleged limitations—is insufficient. Because the ALJ’s
12 first two reasons for rejecting Plaintiff’s testimony did not meet the specific, clear, and
13 convincing standard, a mere lack of objective support, without more, was insufficient to
14 reject Plaintiff’s testimony. *See Burch*, 400 F.3d at 680–81.

15 In sum, the Court finds that the ALJ’s reasons for rejecting Plaintiff’s symptom
16 testimony were not specific, clear, and convincing or supported by substantial evidence,
17 and it was therefore error.

18 **B. The ALJ erred by rejecting the opinion of Plaintiff’s treating physician.**

19 The final issue is whether the ALJ errantly rejected the opinion of her treating
20 physician, Dr. Troy Anderson. In March 2016, Dr. Anderson opined that Plaintiff suffers
21 from migraines seven or eight times per week that can last up to an entire day. (R. at 447–
22 48.) He opined that it is common for patients with migraines to have normal or
23 unremarkable MRIs and physical examinations. (R. at 448.) He noted that Plaintiff’s
24 migraines are at a level of severity that she cannot function normally and that she would
25 have issues with mental stamina, attention, concentration, focus, punctuality, customer
26 service, problem solving, teamwork, and team chemistry. (R. at 448.)

27 The ALJ rejected Dr. Anderson’s opinion for the same reasons he rejected Plaintiff’s
28 testimony: (1) she learned to remove or avoid triggers that cause her migraines; and (2) she

1 responded well to treatment such that she can “persevere through the migraines headaches
2 and lead a productive and relatively active life.” (R. at 24.) Instead, the ALJ gave great
3 weight to the opinion of Dr. Donald Fruchtman, the consultative examiner. (R. at 23.)

4 An ALJ may reject the contradicted opinions of treating or examining sources by
5 providing specific and legitimate reasons that are supported by substantial evidence.
6 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). An ALJ satisfies the substantial
7 evidence requirement by providing a “detailed and thorough summary of the facts and
8 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
9 *Garrison*, 759 F.3d at 1012 (quotations and citations omitted).

10 The Court finds that the ALJ’s rationale for rejecting Dr. Anderson’s opinion was
11 not specific and legitimate or supported by substantial evidence. The ALJ’s analysis of the
12 opinion evidence was brief and based entirely on the analysis of Plaintiff’s testimony. (R.
13 at 24.) Moreover, the ALJ failed to explain how the evidence undermined Dr. Anderson’s
14 opinion. The Court finds that this was insufficient because the ALJ did not adequately
15 evaluate the medical evidence in a “detailed and thorough fashion” as is required by the
16 regulations. *See Maganalles v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

17 The ALJ erred by rejecting Dr. Anderson’s opinion because the ALJ failed to
18 provide specific and legitimate reasons supported by substantial evidence.

19 **C. The proper remedy is to remand for payment of benefits.**

20 Plaintiff asks the Court to remand her case for payment of benefits. (Pl. Br. at 24.)
21 The credit-as-true rule applies if three elements are present. *Garrison*, 759 F.3d at 1020.
22 First, the record must be fully developed such that further administrative proceedings
23 would not be useful. *Id.* Second, the ALJ must have failed to provide legally sufficient
24 reasons for rejecting evidence. *Id.* Third, “if the improperly discredited evidence were
25 credited as true, the ALJ would be required to find the claimant disabled on remand.” *Id.*
26 Even if all elements of the credit-as-true rule are met, the Court maintains “flexibility to
27 remand for further proceedings when the record as a whole creates serious doubt as to
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1 whether the claimant is, in fact, disabled within the meaning of the Social Security Act.”
2 *Id.*

3 Here, the proper remedy is to remand Plaintiff’s case for payment of benefits. All
4 three elements of the credit-as-true rule are met. First, the record is fully developed and the
5 Court finds that further administrative proceedings would serve no useful purpose. Next,
6 the ALJ errantly rejected Plaintiff’s symptom testimony and Dr. Anderson’s opinion. If
7 that evidence were credited as true, the ALJ would be required to find Plaintiff disabled.
8 The vocational expert at Plaintiff’s hearing testified that Plaintiff would be unable to
9 sustain work in the national economy if she was absent five or six days per month. (R. at
10 77.) Plaintiff reported that she suffers from migraines at least 20 days per month for six
11 hours to three days at a time (R. at 262), and Dr. Anderson testified that Plaintiff has seven
12 to eight migraines per week that can last all day (R. at 447–48).

13 Finally, the record does not create serious doubt that Plaintiff is, in fact, disabled.
14 Although the record does not confirm beyond all doubt that Plaintiff’s migraines prevent
15 her from working, it does not create serious doubt that she is disabled. *See Garrison*, 759
16 F.3d at 1023.

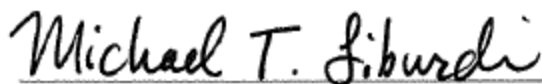
17 Therefore, the proper remedy is to remand Plaintiff’s case for computation and
18 payment of benefits.

19 **IT IS THEREFORE ORDERED** reversing the January 9, 2018 decision of the
20 Administrative Law Judge. (R. at 14–31.)

21 **IT IS FURTHER ORDERED** remanding this case to the Social Security
22 Administration for a calculation of benefits.

23 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter final judgment
24 consistent with this Order and close the case.

25 Dated this 6th day of April, 2020.

26 

27 Michael T. Liburdi
28 United States District Judge